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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,800	06/04/2001	James J. Barnat	501094	2864

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/873,800

Applicant(s)

BARNAT ET AL.

Examiner

Raymond W. Addie

Art Unit

3671

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation page.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

**Continuation Sheet
of
Advisory Action**

1. Applicant's proposed amendment filed 5/3/2004 has not been entered because the proposed amendments to Claims 15, 60 such that "substantially preventing intermixing of asphalt binder material and aggregate material...prior to contact of the aggregate material with the roadway/ground surface, would require further search and consideration of the prior art, as well as the breadth and width of the limitation, with respect as to what features or combination of features are required to permit execution of the function claimed.

2. With respect to Applicant's arguments against the restriction of newly filed claims 76-78, 80-82, Applicant suggested "namely 37 CFR 1.45 as cited by the Examiner explicitly limit such restriction to "claims directed to an invention distinct and independent of the invention previously claimed as set forth in the independent claims...This is inherent by virtue of being dependent claims...the MPEP which generally indicates that a generic claim precludes the issuance of a restriction requirement".

However, the Examiner does not concur.

The fact that claims 76-78, 80-82 are dependent from independent claims 15, 60 does not make the non-distinct or non-independent from the originally filed independent claims; because the independent claims 15, 60 have been amended since originally filed.

Further claims 76-78, 80-82 are distinct from the originally claimed invention because they require various spray nozzle arrangements, which were not previously claimed and are distinct from the originally filed independent claims because independent claim 2 only originally required preventing intermixing binder material and aggregate material prior to the discharging of aggregate material and spraying of asphalt binder material; which only requires separate containers for the aggregate and binder.

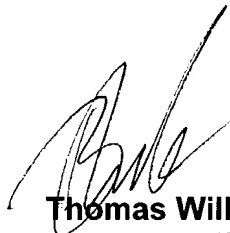
Wherein original Independent Claim 60 only required "separate binder and aggregate dispensing systems such that asphalt binder material and aggregate material are not mixed prior to aggregate material being dispensed through the discharge port".

Therefore, the restriction is seen as proper and is made final.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thomas Will
Supervisory Patent Examiner
Group 3600

RWA
5/10/2004